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**SUBSTITUTE SENATE BILL 5533**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Pflug, Hargrove, Kline, Swecker, Delvin, Stevens, Holmquist, Parlette and Hewitt)

READ FIRST TIME 02/22/07.

1       AN ACT Relating to procedures for individuals who are mentally ill  
2 and engaged in acts constituting criminal behavior; amending RCW  
3 71.05.020, 71.05.150, 71.05.157, 49.19.010, 71.34.600, 71.24.035,  
4 71.05.160, and 71.05.360; reenacting and amending RCW 71.05.390; adding  
5 a new section to chapter 10.31 RCW; adding new sections to chapter  
6 10.77 RCW; adding a new section to chapter 71.05 RCW; creating new  
7 sections; and repealing RCW 10.77.090.

8       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9       NEW SECTION. **Sec. 1.** The legislature finds that RCW 10.77.090  
10 contains laws relating to three discrete subjects. Therefore, one  
11 purpose of this act is to reorganize some of those laws by creating new  
12 sections in the Revised Code of Washington that clarify and identify  
13 these discrete subjects.

14       The legislature further finds that there are disproportionate  
15 numbers of individuals with mental illness in jail. The needs of  
16 individuals with mental illness and the public safety needs of society  
17 at large are better served when individuals with mental illness are  
18 provided an opportunity to obtain treatment and support.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 10.31 RCW  
2 to read as follows:

3        (1) When a police officer has reasonable cause to believe that the  
4 individual has committed acts constituting a nonfelony crime that is  
5 not a serious offense as identified in RCW 10.77.092 and the individual  
6 is known by history or consultation with the regional support network  
7 to suffer from a mental disorder, the arresting officer may:

8            (a) Take the individual to a crisis stabilization unit;

9            (b) Refer the individual to a mental health professional for  
10 evaluation for initial detention and proceeding under chapter 71.05  
11 RCW; or

12            (c) Release the individual upon agreement to voluntary  
13 participation in outpatient treatment.

14        (2) In deciding whether to refer the individual to treatment under  
15 this section, the police officer shall be guided by standards mutually  
16 agreed upon with the prosecuting authority, which address, at a  
17 minimum, the length, seriousness, and recency of the known criminal  
18 history of the individual, the mental health history of the individual,  
19 where available, and the circumstances surrounding the commission of  
20 the alleged offense.

21        (3) Any agreement to participate in treatment shall not require  
22 individuals to stipulate to any of the alleged facts regarding the  
23 criminal activity as a prerequisite to participation in a mental health  
24 treatment alternative. The agreement is inadmissible in any criminal  
25 or civil proceeding. The agreement does not create immunity from  
26 prosecution for the alleged criminal activity.

27        (4) If an individual violates such agreement and the mental health  
28 treatment alternative is no longer appropriate:

29            (a) The mental health provider shall inform the referring law  
30 enforcement agency of the violation; and

31            (b) The original charges may be filed or referred to the  
32 prosecutor, as appropriate, and the matter may proceed accordingly.

33        (5) The police officer is immune from liability for any good faith  
34 conduct under this section.

35        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 10.77 RCW  
36 to read as follows:

37        GENERAL STAY PROVISIONS. (1)(a) If at any time during the pendency

1 of an action and prior to judgment the court finds, following a report  
2 as provided in RCW 10.77.060, a defendant is incompetent, the court  
3 shall order the proceedings against the defendant be stayed except as  
4 provided in subsection (4) of this section.

5 (b) A defendant found incompetent shall be evaluated at the  
6 direction of the secretary and a determination made whether the  
7 defendant is an individual with a developmental disability. Such  
8 evaluation and determination shall be accomplished as soon as possible  
9 following the court's placement of the defendant in the custody of the  
10 secretary.

11 (i) When appropriate, and subject to available funds, if the  
12 defendant is determined to be an individual with a developmental  
13 disability, he or she may be placed in a program specifically reserved  
14 for the treatment and training of persons with developmental  
15 disabilities where the defendant shall have the right to habilitation  
16 according to an individualized service plan specifically developed for  
17 the particular needs of the defendant. A copy of the evaluation shall  
18 be sent to the program.

19 (A) The program shall be separate from programs serving persons  
20 involved in any other treatment or habilitation program.

21 (B) The program shall be appropriately secure under the  
22 circumstances and shall be administered by developmental disabilities  
23 professionals who shall direct the habilitation efforts.

24 (C) The program shall provide an environment affording security  
25 appropriate with the charged criminal behavior and necessary to protect  
26 the public safety.

27 (ii) The department may limit admissions of such persons to this  
28 specialized program in order to ensure that expenditures for services  
29 do not exceed amounts appropriated by the legislature and allocated by  
30 the department for such services.

31 (iii) The department may establish admission priorities in the  
32 event that the number of eligible persons exceeds the limits set by the  
33 department.

34 (c) At the end of the mental health treatment and restoration  
35 period, or at any time a professional person determines competency has  
36 been, or is unlikely to be, restored, the defendant shall be returned  
37 to court for a hearing. If, after notice and hearing, competency has  
38 been restored, the stay entered under (a) of this subsection shall be

1 lifted. If competency has not been restored, the proceedings shall be  
2 dismissed. If the court concludes that competency has not been  
3 restored, but that further treatment within the time limits established  
4 by sections 4 and 5 of this act is likely to restore competency, the  
5 court may order that treatment for purposes of competency restoration  
6 be continued. Such treatment may not extend beyond the combination of  
7 time provided for in sections 4 and 5 of this act.

8 (d) If at any time during the proceeding the court finds, following  
9 notice and hearing, a defendant is not likely to regain competency, the  
10 proceedings shall be dismissed and the defendant shall be evaluated as  
11 provided in (c) of this subsection.

12 (2) If the defendant is referred to the designated mental health  
13 professional for consideration of initial detention proceedings under  
14 chapter 71.05 RCW pursuant to this chapter, the designated mental  
15 health professional shall provide prompt written notification of the  
16 results of the determination whether to commence initial detention  
17 proceedings under chapter 71.05 RCW and whether the person was  
18 detained. The notification shall be provided to the court in which the  
19 criminal action was pending, the prosecutor, the defense attorney in  
20 the criminal action, and the facility that evaluated the defendant for  
21 competency.

22 (3) The fact that the defendant is unfit to proceed does not  
23 preclude any pretrial proceedings which do not require the personal  
24 participation of the defendant.

25 (4) A defendant receiving medication for either physical or mental  
26 problems shall not be prohibited from standing trial, if the medication  
27 either enables the defendant to understand the proceedings against him  
28 or her and to assist in his or her own defense, or does not disable him  
29 or her from so understanding and assisting in his or her own defense.

30 (5) At or before the conclusion of any commitment period provided  
31 for by this section, the facility providing evaluation and treatment  
32 shall provide to the court a written report of examination which meets  
33 the requirements of RCW 10.77.060(3).

34 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.77 RCW  
35 to read as follows:

36 **FELONY PROCEDURE.** (1) If the defendant is charged with a felony  
37 and determined to be incompetent, until he or she has regained the

1 competency necessary to understand the proceedings against him or her  
2 and assist in his or her own defense, or has been determined unlikely  
3 to regain competency pursuant to section 3(1)(c) of this act, the  
4 court:

5 (a) Shall commit the defendant to the custody of the secretary who  
6 shall place such defendant in an appropriate facility of the department  
7 for evaluation and treatment; or

8 (b) May alternatively order the defendant to undergo evaluation and  
9 treatment at some other facility as determined by the department, or  
10 under the guidance and control of a professional person.

11 (2) On or before expiration of the initial ninety-day period of  
12 commitment under subsection (1) of this section the court shall conduct  
13 a hearing, at which it shall determine whether or not the defendant is  
14 incompetent.

15 (3) If the court finds by a preponderance of the evidence that a  
16 defendant charged with a felony is incompetent, the court shall have  
17 the option of extending the order of commitment or alternative  
18 treatment for an additional ninety-day period, but the court must at  
19 the time of extension set a date for a prompt hearing to determine the  
20 defendant's competency before the expiration of the second ninety-day  
21 period. The defendant, the defendant's attorney, or the prosecutor has  
22 the right to demand that the hearing be before a jury. No extension  
23 shall be ordered for a second ninety-day period, nor for any subsequent  
24 period as provided in subsection (4) of this section, if the  
25 defendant's incompetence has been determined by the secretary to be  
26 solely the result of a developmental disability which is such that  
27 competence is not reasonably likely to be regained during an extension.

28 (4) For persons charged with a felony, at the hearing upon the  
29 expiration of the second ninety-day period or at the end of the first  
30 ninety-day period, in the case of a defendant with a developmental  
31 disability, if the jury or court finds that the defendant is  
32 incompetent, the charges shall be dismissed without prejudice, and  
33 either civil commitment proceedings shall be instituted or the court  
34 shall order the release of the defendant. The criminal charges shall  
35 not be dismissed if the court or jury finds that: (a) The defendant  
36 (i) is a substantial danger to other persons; or (ii) presents a  
37 substantial likelihood of committing criminal acts jeopardizing public  
38 safety or security; and (b) there is a substantial probability that the

1 defendant will regain competency within a reasonable period of time.  
2 In the event that the court or jury makes such a finding, the court may  
3 extend the period of commitment for up to an additional six months.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 10.77 RCW  
5 to read as follows:

6 MISDEMEANOR PROCEDURE. (1)(a) If the defendant is charged with a  
7 nonfelony crime which is a serious offense as identified in RCW  
8 10.77.092 and found by the court to be not competent, then the court  
9 shall order the secretary to place the defendant:

10 (i) At a secure mental health facility in the custody of the  
11 department or an agency designated by the department for mental health  
12 treatment and restoration of competency. The placement shall not  
13 exceed fourteen days in addition to any unused time of the evaluation  
14 under RCW 10.77.060. The court shall compute this total period and  
15 include its computation in the order. The fourteen-day period plus any  
16 unused time of the evaluation under RCW 10.77.060 shall be considered  
17 to include only the time the defendant is actually at the facility and  
18 shall be in addition to reasonable time for transport to or from the  
19 facility;

20 (ii) On conditional release for up to ninety days for mental health  
21 treatment and restoration of competency; or

22 (iii) Any combination of this subsection.

23 (b)(i) If the proceedings are dismissed under section 3 of this act  
24 and the defendant was on conditional release at the time of dismissal,  
25 the court shall order the designated mental health professional within  
26 that county to evaluate the defendant pursuant to chapter 71.05 RCW.  
27 The evaluation may be conducted in any location chosen by the  
28 professional.

29 (ii) If the defendant was in custody and not on conditional release  
30 at the time of dismissal, the defendant shall be detained and sent to  
31 an evaluation and treatment facility for up to seventy-two hours,  
32 excluding Saturdays, Sundays, and holidays, for evaluation for purposes  
33 of filing a petition under chapter 71.05 RCW. The seventy-two-hour  
34 period shall commence upon the next nonholiday weekday following the  
35 court order and shall run to the end of the last nonholiday weekday  
36 within the seventy-two-hour period.

1 (2) If the defendant is charged with a nonfelony crime that is not  
2 a serious offense as defined in RCW 10.77.092:

3 The court may stay or dismiss proceedings and detain the defendant  
4 for sufficient time to allow the designated mental health professional  
5 to evaluate the defendant and consider initial detention proceedings  
6 under chapter 71.05 RCW. The court must give notice to all parties at  
7 least twenty-four hours before the dismissal of any proceeding under  
8 this subsection, and provide an opportunity for a hearing on whether to  
9 dismiss the proceedings.

10 **Sec. 6.** RCW 71.05.020 and 2005 c 504 s 104 are each amended to  
11 read as follows:

12 The definitions in this section apply throughout this chapter  
13 unless the context clearly requires otherwise.

14 (1) "Admission" or "admit" means a decision by a physician that a  
15 person should be examined or treated as a patient in a hospital;

16 (2) "Antipsychotic medications" means that class of drugs primarily  
17 used to treat serious manifestations of mental illness associated with  
18 thought disorders, which includes, but is not limited to atypical  
19 antipsychotic medications;

20 (3) "Attending staff" means any person on the staff of a public or  
21 private agency having responsibility for the care and treatment of a  
22 patient;

23 (4) "Commitment" means the determination by a court that a person  
24 should be detained for a period of either evaluation or treatment, or  
25 both, in an inpatient or a less restrictive setting;

26 (5) "Conditional release" means a revocable modification of a  
27 commitment, which may be revoked upon violation of any of its terms;

28 (6) "Crisis stabilization unit" means a short-term facility or a  
29 portion of a facility licensed by the department of health and  
30 certified by the department of social and health services under RCW  
31 71.24.035, such as an evaluation and treatment facility or a hospital,  
32 which has been designed to assess, diagnose, and treat individuals  
33 experiencing an acute crisis without the use of long-term  
34 hospitalization;

35 (7) "Custody" means involuntary detention under the provisions of  
36 this chapter or chapter 10.77 RCW, uninterrupted by any period of

1 unconditional release from commitment from a facility providing  
2 involuntary care and treatment;

3 ~~((+7))~~ (8) "Department" means the department of social and health  
4 services;

5 ~~((+8))~~ (9) "Designated chemical dependency specialist" means a  
6 person designated by the county alcoholism and other drug addiction  
7 program coordinator designated under RCW 70.96A.310 to perform the  
8 commitment duties described in chapters 70.96A and 70.96B RCW;

9 ~~((+9))~~ (10) "Designated crisis responder" means a mental health  
10 professional appointed by the county or the regional support network to  
11 perform the duties specified in this chapter;

12 ~~((+10))~~ (11) "Designated mental health professional" means a  
13 mental health professional designated by the county or other authority  
14 authorized in rule to perform the duties specified in this chapter;

15 ~~((+11))~~ (12) "Detention" or "detain" means the lawful confinement  
16 of a person, under the provisions of this chapter;

17 ~~((+12))~~ (13) "Developmental disabilities professional" means a  
18 person who has specialized training and three years of experience in  
19 directly treating or working with persons with developmental  
20 disabilities and is a psychiatrist, psychologist, or social worker, and  
21 such other developmental disabilities professionals as may be defined  
22 by rules adopted by the secretary;

23 ~~((+13))~~ (14) "Developmental disability" means that condition  
24 defined in RCW 71A.10.020(3);

25 ~~((+14))~~ (15) "Discharge" means the termination of hospital medical  
26 authority. The commitment may remain in place, be terminated, or be  
27 amended by court order;

28 ~~((+15))~~ (16) "Evaluation and treatment facility" means any  
29 facility which can provide directly, or by direct arrangement with  
30 other public or private agencies, emergency evaluation and treatment,  
31 outpatient care, and timely and appropriate inpatient care to persons  
32 suffering from a mental disorder, and which is certified as such by the  
33 department. A physically separate and separately operated portion of  
34 a state hospital may be designated as an evaluation and treatment  
35 facility. A facility which is part of, or operated by, the department  
36 or any federal agency will not require certification. No correctional  
37 institution or facility, or jail, shall be an evaluation and treatment  
38 facility within the meaning of this chapter;

1       (~~(16)~~) (17) "Gravely disabled" means a condition in which a  
2 person, as a result of a mental disorder: (a) Is in danger of serious  
3 physical harm resulting from a failure to provide for his or her  
4 essential human needs of health or safety; or (b) manifests severe  
5 deterioration in routine functioning evidenced by repeated and  
6 escalating loss of cognitive or volitional control over his or her  
7 actions and is not receiving such care as is essential for his or her  
8 health or safety;

9       (~~(17)~~) (18) "Habilitative services" means those services provided  
10 by program personnel to assist persons in acquiring and maintaining  
11 life skills and in raising their levels of physical, mental, social,  
12 and vocational functioning. Habilitative services include education,  
13 training for employment, and therapy. The habilitative process shall  
14 be undertaken with recognition of the risk to the public safety  
15 presented by the person being assisted as manifested by prior charged  
16 criminal conduct;

17       (~~(18)~~) (19) "History of one or more violent acts" refers to the  
18 period of time ten years prior to the filing of a petition under this  
19 chapter, excluding any time spent, but not any violent acts committed,  
20 in a mental health facility or in confinement as a result of a criminal  
21 conviction;

22       (~~(19)~~) (20) "Imminent" means the state or condition of being  
23 likely to occur at any moment or near at hand, rather than distant or  
24 remote;

25       (21) "Individualized service plan" means a plan prepared by a  
26 developmental disabilities professional with other professionals as a  
27 team, for a person with developmental disabilities, which shall state:

28       (a) The nature of the person's specific problems, prior charged  
29 criminal behavior, and habilitation needs;

30       (b) The conditions and strategies necessary to achieve the purposes  
31 of habilitation;

32       (c) The intermediate and long-range goals of the habilitation  
33 program, with a projected timetable for the attainment;

34       (d) The rationale for using this plan of habilitation to achieve  
35 those intermediate and long-range goals;

36       (e) The staff responsible for carrying out the plan;

37       (f) Where relevant in light of past criminal behavior and due

1 consideration for public safety, the criteria for proposed movement to  
2 less-restrictive settings, criteria for proposed eventual discharge or  
3 release, and a projected possible date for discharge or release; and

4 (g) The type of residence immediately anticipated for the person  
5 and possible future types of residences;

6 ~~((+20+))~~ (22) "Judicial commitment" means a commitment by a court  
7 pursuant to the provisions of this chapter;

8 ~~((+21+))~~ (23) "Likelihood of serious harm" means:

9 (a) A substantial risk that: (i) Physical harm will be inflicted  
10 by a person upon his or her own person, as evidenced by threats or  
11 attempts to commit suicide or inflict physical harm on oneself; (ii)  
12 physical harm will be inflicted by a person upon another, as evidenced  
13 by behavior which has caused such harm or which places another person  
14 or persons in reasonable fear of sustaining such harm; or (iii)  
15 physical harm will be inflicted by a person upon the property of  
16 others, as evidenced by behavior which has caused substantial loss or  
17 damage to the property of others; or

18 (b) The person has threatened the physical safety of another and  
19 has a history of one or more violent acts;

20 ~~((+22+))~~ (24) "Mental disorder" means any organic, mental, or  
21 emotional impairment which has substantial adverse effects on a  
22 person's cognitive or volitional functions;

23 ~~((+23+))~~ (25) "Mental health professional" means a psychiatrist,  
24 psychologist, psychiatric nurse, or social worker, and such other  
25 mental health professionals as may be defined by rules adopted by the  
26 secretary pursuant to the provisions of this chapter;

27 ~~((+24+))~~ (26) "Peace officer" means a law enforcement official of  
28 a public agency or governmental unit, and includes persons specifically  
29 given peace officer powers by any state law, local ordinance, or  
30 judicial order of appointment;

31 ~~((+25+))~~ (27) "Private agency" means any person, partnership,  
32 corporation, or association that is not a public agency, whether or not  
33 financed in whole or in part by public funds, which constitutes an  
34 evaluation and treatment facility or private institution, or hospital,  
35 which is conducted for, or includes a department or ward conducted for,  
36 the care and treatment of persons who are mentally ill;

37 ~~((+26+))~~ (28) "Professional person" means a mental health

1 professional and shall also mean a physician, registered nurse, and  
2 such others as may be defined by rules adopted by the secretary  
3 pursuant to the provisions of this chapter;

4 ~~((+27))~~ (29) "Psychiatrist" means a person having a license as a  
5 physician and surgeon in this state who has in addition completed three  
6 years of graduate training in psychiatry in a program approved by the  
7 American medical association or the American osteopathic association  
8 and is certified or eligible to be certified by the American board of  
9 psychiatry and neurology;

10 ~~((+28))~~ (30) "Psychologist" means a person who has been licensed  
11 as a psychologist pursuant to chapter 18.83 RCW;

12 ~~((+29))~~ (31) "Public agency" means any evaluation and treatment  
13 facility or institution, or hospital which is conducted for, or  
14 includes a department or ward conducted for, the care and treatment of  
15 persons ~~((who are mentally ill))~~ with mental illness, if the agency is  
16 operated directly by, federal, state, county, or municipal government,  
17 or a combination of such governments;

18 ~~((+30))~~ (32) "Registration records" include all the records of the  
19 department, regional support networks, treatment facilities, and other  
20 persons providing services to the department, county departments, or  
21 facilities which identify persons who are receiving or who at any time  
22 have received services for mental illness;

23 ~~((+31))~~ (33) "Release" means legal termination of the commitment  
24 under the provisions of this chapter;

25 ~~((+32))~~ (34) "Resource management services" has the meaning given  
26 in chapter 71.24 RCW;

27 ~~((+33))~~ (35) "Secretary" means the secretary of the department of  
28 social and health services, or his or her designee;

29 ~~((+34))~~ (36) "Social worker" means a person with a master's or  
30 further advanced degree from an accredited school of social work or a  
31 degree deemed equivalent under rules adopted by the secretary;

32 ~~((+35))~~ (37) "Treatment records" include registration and all  
33 other records concerning persons who are receiving or who at any time  
34 have received services for mental illness, which are maintained by the  
35 department, by regional support networks and their staffs, and by  
36 treatment facilities. Treatment records do not include notes or  
37 records maintained for personal use by a person providing treatment

1 services for the department, regional support networks, or a treatment  
2 facility if the notes or records are not available to others;

3 ((+36+)) (38) "Violent act" means behavior that resulted in  
4 homicide, attempted suicide, nonfatal injuries, or substantial damage  
5 to property.

6 **Sec. 7.** RCW 71.05.150 and 1998 c 297 s 8 are each amended to read  
7 as follows:

8 NONEMERGENT DETENTION. (1)((+a+)) When a ((county)) designated  
9 mental health professional receives information alleging that a person,  
10 as a result of a mental disorder: (i) Presents a likelihood of serious  
11 harm; or (ii) is gravely disabled; the ((county)) designated mental  
12 health professional may, after investigation and evaluation of the  
13 specific facts alleged and of the reliability and credibility of any  
14 person providing information to initiate detention, if satisfied that  
15 the allegations are true and that the person will not voluntarily seek  
16 appropriate treatment, file a petition for initial detention. Before  
17 filing the petition, the ((county)) designated mental health  
18 professional must personally interview the person, unless the person  
19 refuses an interview, and determine whether the person will voluntarily  
20 receive appropriate evaluation and treatment at an evaluation and  
21 treatment facility or in a crisis stabilization unit.

22 ~~((b) Whenever it appears, by petition for initial detention, to  
23 the satisfaction of a judge of the superior court that a person  
24 presents, as a result of a mental disorder, a likelihood of serious  
25 harm, or is gravely disabled, and that the person has refused or failed  
26 to accept appropriate evaluation and treatment voluntarily, the judge  
27 may issue an order requiring the person to appear within twenty four  
28 hours after service of the order at a designated evaluation and  
29 treatment facility for not more than a seventy two hour evaluation and  
30 treatment period. The order shall state the address of the evaluation  
31 and treatment facility to which the person is to report and whether the  
32 required seventy two hour evaluation and treatment services may be  
33 delivered on an outpatient or inpatient basis and that if the person  
34 named in the order fails to appear at the evaluation and treatment  
35 facility at or before the date and time stated in the order, such  
36 person may be involuntarily taken into custody for evaluation and  
37 treatment. The order shall also designate retained counsel or, if~~

1 ~~counsel is appointed from a list provided by the court, the name,~~  
2 ~~business address, and telephone number of the attorney appointed to~~  
3 ~~represent the person.~~

4 (e)) (2)(a) An order to detain to a designated evaluation and  
5 treatment facility for not more than a seventy-two-hour evaluation and  
6 treatment period may be issued by a judge of the superior court upon  
7 request of a designated mental health professional, whenever it appears  
8 to the satisfaction of a judge of the superior court:

9 (i) That there is probable cause to support the petition; and

10 (ii) That the person has refused or failed to accept appropriate  
11 evaluation and treatment voluntarily.

12 (b) The petition for initial detention, signed under penalty of  
13 perjury, or sworn telephonic testimony may be considered by the court  
14 in determining whether there are sufficient grounds for issuing the  
15 order.

16 (c) The order shall designate retained counsel or, if counsel is  
17 appointed from a list provided by the court, the name, business  
18 address, and telephone number of the attorney appointed to represent  
19 the person.

20 (3) The ((county)) designated mental health professional shall then  
21 serve or cause to be served on such person, his or her guardian, and  
22 conservator, if any, a copy of the order ((to appear)) together with a  
23 notice of rights, and a petition for initial detention. After service  
24 on such person the ((county)) designated mental health professional  
25 shall file the return of service in court and provide copies of all  
26 papers in the court file to the evaluation and treatment facility and  
27 the designated attorney. The ((county)) designated mental health  
28 professional shall notify the court and the prosecuting attorney that  
29 a probable cause hearing will be held within seventy-two hours of the  
30 date and time of outpatient evaluation or admission to the evaluation  
31 and treatment facility. The person shall be permitted ((to remain in  
32 his or her home or other place of his or her choosing prior to the time  
33 of evaluation and shall be permitted)) to be accompanied by one or more  
34 of his or her relatives, friends, an attorney, a personal physician, or  
35 other professional or religious advisor to the place of evaluation. An  
36 attorney accompanying the person to the place of evaluation shall be  
37 permitted to be present during the admission evaluation. Any other  
38 individual accompanying the person may be present during the admission

1 evaluation. The facility may exclude the individual if his or her  
2 presence would present a safety risk, delay the proceedings, or  
3 otherwise interfere with the evaluation.

4 ~~((d) If the person ordered to appear does appear on or before the  
5 date and time specified, the evaluation and treatment facility may  
6 admit such person as required by RCW 71.05.170 or may provide treatment  
7 on an outpatient basis. If the person ordered to appear fails to  
8 appear on or before the date and time specified, the evaluation and  
9 treatment facility shall immediately notify))~~

10 (4) The ~~((county))~~ designated mental health professional ~~((who))~~  
11 may notify a peace officer to take such person or cause such person to  
12 be taken into custody and placed in an evaluation and treatment  
13 facility. ~~((Should the county designated mental health professional  
14 notify a peace officer authorizing him or her to take a person into  
15 custody under the provisions of this subsection, he or she shall file  
16 with the court a copy of such authorization and a notice of  
17 detention.))~~ At the time such person is taken into custody there shall  
18 commence to be served on such person, his or her guardian, and  
19 conservator, if any, a copy of the original order together with a  
20 ~~((notice of detention, a))~~ notice of rights~~((7))~~ and a petition for  
21 initial detention.

22 ~~((2) When a county designated mental health professional receives  
23 information alleging that a person, as the result of a mental disorder,  
24 presents an imminent likelihood of serious harm, or is in imminent  
25 danger because of being gravely disabled, after investigation and  
26 evaluation of the specific facts alleged and of the reliability and  
27 credibility of the person or persons providing the information if any,  
28 the county designated mental health professional may take such person,  
29 or cause by oral or written order such person to be taken into  
30 emergency custody in an evaluation and treatment facility for not more  
31 than seventy two hours as described in RCW 71.05.180.~~

32 ~~(3) A peace officer may take such person or cause such person to be  
33 taken into custody and placed in an evaluation and treatment facility  
34 pursuant to subsection (1)(d) of this section.~~

35 ~~(4) A peace officer may, without prior notice of the proceedings  
36 provided for in subsection (1) of this section, take or cause such  
37 person to be taken into custody and immediately delivered to an~~

1 ~~evaluation and treatment facility or the emergency department of a~~  
2 ~~local hospital:~~

3 ~~(a) Only pursuant to subsections (1)(d) and (2) of this section; or~~

4 ~~(b) When he or she has reasonable cause to believe that such person~~  
5 ~~is suffering from a mental disorder and presents an imminent likelihood~~  
6 ~~of serious harm or is in imminent danger because of being gravely~~  
7 ~~disabled.~~

8 ~~(5) Persons delivered to evaluation and treatment facilities by~~  
9 ~~peace officers pursuant to subsection (4)(b) of this section may be~~  
10 ~~held by the facility for a period of up to twelve hours: PROVIDED,~~  
11 ~~That they are examined by a mental health professional within three~~  
12 ~~hours of their arrival. Within twelve hours of their arrival, the~~  
13 ~~county designated mental health professional must file a supplemental~~  
14 ~~petition for detention, and commence service on the designated attorney~~  
15 ~~for the detained person.))~~

16 NEW SECTION. **Sec. 8.** A new section is added to chapter 71.05 RCW  
17 to read as follows:

18 EMERGENT DETENTION. (1) When a designated mental health  
19 professional receives information alleging that a person, as the result  
20 of a mental disorder, presents an imminent likelihood of serious harm,  
21 or is in imminent danger because of being gravely disabled, after  
22 investigation and evaluation of the specific facts alleged and of the  
23 reliability and credibility of the person or persons providing the  
24 information if any, the designated mental health professional may take  
25 such person, or cause by oral or written order such person to be taken  
26 into emergency custody in an evaluation and treatment facility for not  
27 more than seventy-two hours as described in RCW 71.05.180.

28 (2) A peace officer may take or cause such person to be taken into  
29 custody and immediately delivered to a crisis stabilization unit, an  
30 evaluation and treatment facility, or the emergency department of a  
31 local hospital under the following circumstances:

32 (a) Pursuant to subsection (1) of this section; or

33 (b) When he or she has reasonable cause to believe that such person  
34 is suffering from a mental disorder and presents an imminent likelihood  
35 of serious harm or is in imminent danger because of being gravely  
36 disabled.

1 (3) Persons delivered to a crisis stabilization unit, evaluation  
2 and treatment facility, or the emergency department of a local hospital  
3 by peace officers pursuant to subsection (2) of this section may be  
4 held by the facility for a period of up to twelve hours: PROVIDED,  
5 That they are examined by a mental health professional within three  
6 hours of their arrival. Within twelve hours of their arrival, the  
7 designated mental health professional must determine whether the  
8 individual meets detention criteria. If the individual is detained,  
9 the designated mental health professional shall file a petition for  
10 detention or a supplemental petition as appropriate and commence  
11 service on the designated attorney for the detained person.

12 **Sec. 9.** RCW 71.05.157 and 2005 c 504 s 507 are each amended to  
13 read as follows:

14 (1) When a designated mental health professional is notified by a  
15 jail that a defendant or offender who was subject to a discharge review  
16 under RCW 71.05.232 is to be released to the community, the designated  
17 mental health professional shall evaluate the person within seventy-two  
18 hours of release.

19 (2) When an offender is under court-ordered treatment in the  
20 community and the supervision of the department of corrections, and the  
21 treatment provider becomes aware that the person is in violation of the  
22 terms of the court order, the treatment provider shall notify the  
23 designated mental health professional and the department of corrections  
24 of the violation and request an evaluation for purposes of revocation  
25 of the less restrictive alternative.

26 (3) When a designated mental health professional becomes aware that  
27 an offender who is under court-ordered treatment in the community and  
28 the supervision of the department of corrections is in violation of a  
29 treatment order or a condition of supervision that relates to public  
30 safety, or the designated mental health professional detains a person  
31 under this chapter, the designated mental health professional shall  
32 notify the person's treatment provider and the department of  
33 corrections.

34 (4) When an offender who is confined in a state correctional  
35 facility or is under supervision of the department of corrections in  
36 the community is subject to a petition for involuntary treatment under  
37 this chapter, the petitioner shall notify the department of corrections

1 and the department of corrections shall provide documentation of its  
2 risk assessment or other concerns to the petitioner and the court if  
3 the department of corrections classified the offender as a high risk or  
4 high needs offender.

5 (5) Nothing in this section creates a duty on any treatment  
6 provider or designated mental health professional to provide offender  
7 supervision.

8 (6) No jail or state correctional facility may be considered a less  
9 restrictive alternative to an evaluation and treatment facility.

10 NEW SECTION. Sec. 10. (1) A joint task force on decreasing the  
11 number of individuals with mental illness entering the criminal justice  
12 system is created. The joint task force shall consist of the following  
13 members:

14 (a) Two judicial officers, appointed by the board for judicial  
15 administration, one representing the superior court judges and the  
16 other representing district court judges;

17 (b) One member from each of the two largest caucuses of the senate,  
18 appointed by the president of the senate;

19 (c) One member from each of the two largest caucuses of the house  
20 of representatives, appointed by the speaker of the house of  
21 representatives;

22 (d) The secretary of the department of social and health services  
23 or the secretary's designee;

24 (e) The secretary of the department of corrections or the  
25 secretary's designee;

26 (f) An elected sheriff or police chief, selected by the Washington  
27 association of sheriffs and police chiefs; and

28 (g) The following twelve members, jointly appointed by the speaker  
29 of the house of representatives and the president of the senate:

30 (i) A representative from the community mental health council;

31 (ii) A representative from the Washington state affiliate of the  
32 national alliance on mental illness;

33 (iii) A representative from one of the regional support networks;

34 (iv) A representative of Washington protection and advocacy;

35 (v) A city or county prosecutor with experience in involuntary  
36 civil commitments or criminal cases involving questions of competency;

- 1 (vi) An assistant attorney general with experience in involuntary  
2 civil commitments or criminal cases involving questions of competency;  
3 (vii) A public defender with experience in involuntary civil  
4 commitments or criminal cases involving questions of competency;  
5 (viii) A representative of the Washington association of counties;  
6 (ix) A representative of the association of Washington cities;  
7 (x) A representative selected from amongst the mental health  
8 ombudsmen required by RCW 71.24.350;  
9 (xi) A representative of the Washington association of designated  
10 mental health professionals; and  
11 (xii) A representative from amongst the Washington state jail  
12 administrators.

13 (2) The task force shall choose two cochairs from among its  
14 membership.

15 (3) The task force shall review and make recommendations to the  
16 legislature and the governor regarding increased access to mental  
17 health services for those within the criminal justice system and  
18 strategies that will decrease the number of people with mental health  
19 illness entering and reentering the criminal justice system.

20 (4) The task force, where feasible, may consult with individuals  
21 from the public and private sector.

22 (5) The task force shall use legislative facilities and staff from  
23 senate committee services and the house office of program research.

24 (6) The task force shall report its findings and recommendations to  
25 the legislature by July 1, 2008.

26 **Sec. 11.** RCW 49.19.010 and 2000 c 94 s 18 are each amended to read  
27 as follows:

28 For purposes of this chapter:

29 (1) "Health care setting" means:

30 (a) Hospitals as defined in RCW 70.41.020;

31 (b) Home health, hospice, and home care agencies under chapter  
32 70.127 RCW, subject to RCW 49.19.070;

33 (c) Evaluation and treatment facilities as defined in RCW  
34 71.05.020(~~(+12)~~); and

35 (d) Community mental health programs as defined in RCW  
36 71.24.025(5).

37 (2) "Department" means the department of labor and industries.

1 (3) "Employee" means an employee as defined in RCW 49.17.020.

2 (4) "Violence" or "violent act" means any physical assault or  
3 verbal threat of physical assault against an employee of a health care  
4 setting.

5 **Sec. 12.** RCW 71.34.600 and 2005 c 371 s 4 are each amended to read  
6 as follows:

7 (1) A parent may bring, or authorize the bringing of, his or her  
8 minor child to an evaluation and treatment facility or an inpatient  
9 facility licensed under chapter 70.41, 71.12, or 72.23 RCW and request  
10 that the professional person (~~as defined in RCW 71.05.020(24)~~)  
11 examine the minor to determine whether the minor has a mental disorder  
12 and is in need of inpatient treatment.

13 (2) The consent of the minor is not required for admission,  
14 evaluation, and treatment if the parent brings the minor to the  
15 facility.

16 (3) An appropriately trained professional person may evaluate  
17 whether the minor has a mental disorder. The evaluation shall be  
18 completed within twenty-four hours of the time the minor was brought to  
19 the facility, unless the professional person determines that the  
20 condition of the minor necessitates additional time for evaluation. In  
21 no event shall a minor be held longer than seventy-two hours for  
22 evaluation. If, in the judgment of the professional person, it is  
23 determined it is a medical necessity for the minor to receive inpatient  
24 treatment, the minor may be held for treatment. The facility shall  
25 limit treatment to that which the professional person determines is  
26 medically necessary to stabilize the minor's condition until the  
27 evaluation has been completed. Within twenty-four hours of completion  
28 of the evaluation, the professional person shall notify the department  
29 if the child is held for treatment and of the date of admission.

30 (4) No provider is obligated to provide treatment to a minor under  
31 the provisions of this section except that no provider may refuse to  
32 treat a minor under the provisions of this section solely on the basis  
33 that the minor has not consented to the treatment. No provider may  
34 admit a minor to treatment under this section unless it is medically  
35 necessary.

36 (5) No minor receiving inpatient treatment under this section may  
37 be discharged from the facility based solely on his or her request.

1 (6) Prior to the review conducted under RCW 71.34.610, the  
2 professional person shall notify the minor of his or her right to  
3 petition superior court for release from the facility.

4 (7) For the purposes of this section "professional person" means  
5 "professional person" as defined in RCW 71.05.020.

6 **Sec. 13.** RCW 71.24.035 and 2006 c 333 s 201 are each amended to  
7 read as follows:

8 (1) The department is designated as the state mental health  
9 authority.

10 (2) The secretary shall provide for public, client, and licensed  
11 service provider participation in developing the state mental health  
12 program, developing contracts with regional support networks, and any  
13 waiver request to the federal government under medicaid.

14 (3) The secretary shall provide for participation in developing the  
15 state mental health program for children and other underserved  
16 populations, by including representatives on any committee established  
17 to provide oversight to the state mental health program.

18 (4) The secretary shall be designated as the regional support  
19 network if the regional support network fails to meet state minimum  
20 standards or refuses to exercise responsibilities under RCW 71.24.045.

21 (5) The secretary shall:

22 (a) Develop a biennial state mental health program that  
23 incorporates regional biennial needs assessments and regional mental  
24 health service plans and state services for (~~mentally ill~~) adults and  
25 children with mental illness. The secretary shall also develop a six-  
26 year state mental health plan;

27 (b) Assure that any regional or county community mental health  
28 program provides access to treatment for the region's residents in the  
29 following order of priority: (i) (~~The acutely mentally ill~~) Persons  
30 with acute mental illness; (ii) (~~chronically mentally ill~~) adults  
31 with chronic mental illness and children who are severely emotionally  
32 disturbed (~~children~~); and (iii) (~~the~~) persons who are seriously  
33 disturbed. Such programs shall provide:

34 (A) Outpatient services;

35 (B) Emergency care services for twenty-four hours per day;

36 (C) Day treatment for (~~mentally ill~~) persons with mental illness  
37 which includes training in basic living and social skills, supported

1 work, vocational rehabilitation, and day activities. Such services may  
2 include therapeutic treatment. In the case of a child, day treatment  
3 includes age-appropriate basic living and social skills, educational  
4 and prevocational services, day activities, and therapeutic treatment;

5 (D) Screening for patients being considered for admission to state  
6 mental health facilities to determine the appropriateness of admission;

7 (E) Employment services, which may include supported employment,  
8 transitional work, placement in competitive employment, and other work-  
9 related services, that result in (~~mentally ill~~) persons with mental  
10 illness becoming engaged in meaningful and gainful full or part-time  
11 work. Other sources of funding such as the division of vocational  
12 rehabilitation may be utilized by the secretary to maximize federal  
13 funding and provide for integration of services;

14 (F) Consultation and education services; and

15 (G) Community support services;

16 (c) Develop and adopt rules establishing state minimum standards  
17 for the delivery of mental health services pursuant to RCW 71.24.037  
18 including, but not limited to:

19 (i) Licensed service providers. These rules shall permit a county-  
20 operated mental health program to be licensed as a service provider  
21 subject to compliance with applicable statutes and rules. The  
22 secretary shall provide for deeming of compliance with state minimum  
23 standards for those entities accredited by recognized behavioral health  
24 accrediting bodies recognized and having a current agreement with the  
25 department;

26 (ii) Regional support networks; and

27 (iii) Inpatient services, evaluation and treatment services and  
28 facilities under chapter 71.05 RCW, resource management services, and  
29 community support services;

30 (d) Assure that the special needs of persons who are minorities,  
31 (~~the~~) elderly, disabled, children, and low-income (~~persons~~) are met  
32 within the priorities established in this section;

33 (e) Establish a standard contract or contracts, consistent with  
34 state minimum standards and RCW 71.24.320, 71.24.330, and 71.24.3201,  
35 which shall be used in contracting with regional support networks. The  
36 standard contract shall include a maximum fund balance, which shall be  
37 consistent with that required by federal regulations or waiver  
38 stipulations;

1 (f) Establish, to the extent possible, a standardized auditing  
2 procedure which minimizes paperwork requirements of regional support  
3 networks and licensed service providers. The audit procedure shall  
4 focus on the outcomes of service and not the processes for  
5 accomplishing them;

6 (g) Develop and maintain an information system to be used by the  
7 state and regional support networks that includes a tracking method  
8 which allows the department and regional support networks to identify  
9 mental health clients' participation in any mental health service or  
10 public program on an immediate basis. The information system shall not  
11 include individual patient's case history files. Confidentiality of  
12 client information and records shall be maintained as provided in this  
13 chapter and in RCW 71.05.390, 71.05.420, and 71.05.440;

14 (h) License service providers who meet state minimum standards;

15 (i) Certify regional support networks that meet state minimum  
16 standards;

17 (j) Periodically monitor the compliance of certified regional  
18 support networks and their network of licensed service providers for  
19 compliance with the contract between the department, the regional  
20 support network, and federal and state rules at reasonable times and in  
21 a reasonable manner;

22 (k) Fix fees to be paid by evaluation and treatment centers to the  
23 secretary for the required inspections;

24 (l) Monitor and audit regional support networks and licensed  
25 service providers as needed to assure compliance with contractual  
26 agreements authorized by this chapter;

27 (m) Adopt such rules as are necessary to implement the department's  
28 responsibilities under this chapter; (~~and~~)

29 (n) Assure the availability of an appropriate amount, as determined  
30 by the legislature in the operating budget by amounts appropriated for  
31 this specific purpose, of community-based, geographically distributed  
32 residential services; and

33 (o) Certify crisis stabilization units that meet state minimum  
34 standards.

35 (6) The secretary shall use available resources only for regional  
36 support networks, except to the extent authorized, and in accordance  
37 with any priorities or conditions specified, in the biennial  
38 appropriations act.

1 (7) Each certified regional support network and licensed service  
2 provider shall file with the secretary, on request, such data,  
3 statistics, schedules, and information as the secretary reasonably  
4 requires. A certified regional support network or licensed service  
5 provider which, without good cause, fails to furnish any data,  
6 statistics, schedules, or information as requested, or files fraudulent  
7 reports thereof, may have its certification or license revoked or  
8 suspended.

9 (8) The secretary may suspend, revoke, limit, or restrict a  
10 certification or license, or refuse to grant a certification or license  
11 for failure to conform to: (a) The law; (b) applicable rules and  
12 regulations; (c) applicable standards; or (d) state minimum standards.

13 (9) The superior court may restrain any regional support network or  
14 service provider from operating without certification or a license or  
15 any other violation of this section. The court may also review,  
16 pursuant to procedures contained in chapter 34.05 RCW, any denial,  
17 suspension, limitation, restriction, or revocation of certification or  
18 license, and grant other relief required to enforce the provisions of  
19 this chapter.

20 (10) Upon petition by the secretary, and after hearing held upon  
21 reasonable notice to the facility, the superior court may issue a  
22 warrant to an officer or employee of the secretary authorizing him or  
23 her to enter at reasonable times, and examine the records, books, and  
24 accounts of any regional support network or service provider refusing  
25 to consent to inspection or examination by the authority.

26 (11) Notwithstanding the existence or pursuit of any other remedy,  
27 the secretary may file an action for an injunction or other process  
28 against any person or governmental unit to restrain or prevent the  
29 establishment, conduct, or operation of a regional support network or  
30 service provider without certification or a license under this chapter.

31 (12) The standards for certification of evaluation and treatment  
32 facilities shall include standards relating to maintenance of good  
33 physical and mental health and other services to be afforded persons  
34 pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall  
35 otherwise assure the effectuation of the purposes of these chapters.

36 (13) The standards for certification of crisis stabilization units  
37 shall include standards that:

1       (a) Permit location of the units at a jail facility if the unit is  
2 physically separate from the general population of the jail;

3       (b) Require administration of the unit by mental health  
4 professionals who direct the stabilization and rehabilitation efforts;  
5 and

6       (c) Provide an environment affording security appropriate with the  
7 alleged criminal behavior and necessary to protect the public safety.

8       (14) The department shall distribute appropriated state and federal  
9 funds in accordance with any priorities, terms, or conditions specified  
10 in the appropriations act.

11       (~~(14)~~) (15) The secretary shall assume all duties assigned to the  
12 nonparticipating regional support networks under chapters 71.05, 71.34,  
13 and 71.24 RCW. Such responsibilities shall include those which would  
14 have been assigned to the nonparticipating counties in regions where  
15 there are not participating regional support networks.

16       The regional support networks, or the secretary's assumption of all  
17 responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be  
18 included in all state and federal plans affecting the state mental  
19 health program including at least those required by this chapter, the  
20 medicaid program, and P.L. 99-660. Nothing in these plans shall be  
21 inconsistent with the intent and requirements of this chapter.

22       (~~(15)~~) (16) The secretary shall:

23       (a) Disburse funds for the regional support networks within sixty  
24 days of approval of the biennial contract. The department must either  
25 approve or reject the biennial contract within sixty days of receipt.

26       (b) Enter into biennial contracts with regional support networks.  
27 The contracts shall be consistent with available resources. No  
28 contract shall be approved that does not include progress toward  
29 meeting the goals of this chapter by taking responsibility for: (i)  
30 Short-term commitments; (ii) residential care; and (iii) emergency  
31 response systems.

32       (c) Notify regional support networks of their allocation of  
33 available resources at least sixty days prior to the start of a new  
34 biennial contract period.

35       (d) Deny all or part of the funding allocations to regional support  
36 networks based solely upon formal findings of noncompliance with the  
37 terms of the regional support network's contract with the department.

1 Regional support networks disputing the decision of the secretary to  
2 withhold funding allocations are limited to the remedies provided in  
3 the department's contracts with the regional support networks.

4 ~~((16))~~ (17) The department, in cooperation with the state  
5 congressional delegation, shall actively seek waivers of federal  
6 requirements and such modifications of federal regulations as are  
7 necessary to allow federal medicaid reimbursement for services provided  
8 by free-standing evaluation and treatment facilities certified under  
9 chapter 71.05 RCW. The department shall periodically report its  
10 efforts to the appropriate committees of the senate and the house of  
11 representatives.

12 **Sec. 14.** RCW 71.05.160 and 1998 c 297 s 9 are each amended to read  
13 as follows:

14 Any facility receiving a person pursuant to RCW 71.05.150 or  
15 section 8 of this act shall require the designated mental health  
16 professional to prepare a petition for initial detention stating the  
17 circumstances under which the person's condition was made known and  
18 stating that ~~((such officer or person has))~~ there is evidence, as a  
19 result of his or her personal observation or investigation, that the  
20 actions of the person for which application is made constitute a  
21 likelihood of serious harm, or that he or she is gravely disabled, and  
22 stating the specific facts known to him or her as a result of his or  
23 her personal observation or investigation, upon which he or she bases  
24 the belief that such person should be detained for the purposes and  
25 under the authority of this chapter.

26 If a person is involuntarily placed in an evaluation and treatment  
27 facility pursuant to RCW 71.05.150 or section 8 of this act, on the  
28 next judicial day following the initial detention, the ~~((county))~~  
29 designated mental health professional shall file with the court and  
30 serve the designated attorney of the detained person the petition or  
31 supplemental petition for initial detention, proof of service of  
32 notice, and a copy of a notice of emergency detention.

33 **Sec. 15.** RCW 71.05.360 and 2005 c 504 s 107 are each amended to  
34 read as follows:

35 (1)(a) Every person involuntarily detained or committed under the  
36 provisions of this chapter shall be entitled to all the rights set

1 forth in this chapter, which shall be prominently posted in the  
2 facility, and shall retain all rights not denied him or her under this  
3 chapter except as chapter 9.41 RCW may limit the right of a person to  
4 purchase or possess a firearm or to qualify for a concealed pistol  
5 license.

6 (b) No person shall be presumed incompetent as a consequence of  
7 receiving an evaluation or voluntary or involuntary treatment for a  
8 mental disorder, under this chapter or any prior laws of this state  
9 dealing with mental illness. Competency shall not be determined or  
10 withdrawn except under the provisions of chapter 10.97 or 11.88 RCW.

11 (c) Any person who leaves a public or private agency following  
12 evaluation or treatment for mental disorder shall be given a written  
13 statement setting forth the substance of this section.

14 (2) Each person involuntarily detained or committed pursuant to  
15 this chapter shall have the right to adequate care and individualized  
16 treatment.

17 (3) The provisions of this chapter shall not be construed to deny  
18 to any person treatment by spiritual means through prayer in accordance  
19 with the tenets and practices of a church or religious denomination.

20 (4) Persons receiving evaluation or treatment under this chapter  
21 shall be given a reasonable choice of an available physician or other  
22 professional person qualified to provide such services.

23 (5) Whenever any person is detained for evaluation and treatment  
24 pursuant to this chapter, both the person and, if possible, a  
25 responsible member of his or her immediate family, personal  
26 representative, guardian, or conservator, if any, shall be advised as  
27 soon as possible in writing or orally, by the officer or person taking  
28 him or her into custody or by personnel of the evaluation and treatment  
29 facility where the person is detained that unless the person is  
30 released or voluntarily admits himself or herself for treatment within  
31 seventy-two hours of the initial detention:

32 (a) A judicial hearing in a superior court, either by a judge or  
33 court commissioner thereof, shall be held not more than seventy-two  
34 hours after the initial detention to determine whether there is  
35 probable cause to detain the person after the seventy-two hours have  
36 expired for up to an additional fourteen days without further automatic  
37 hearing for the reason that the person is a person whose mental

1 disorder presents a likelihood of serious harm or that the person is  
2 gravely disabled;

3 (b) The person has a right to communicate immediately with an  
4 attorney; has a right to have an attorney appointed to represent him or  
5 her before and at the probable cause hearing if he or she is indigent;  
6 and has the right to be told the name and address of the attorney that  
7 the mental health professional has designated pursuant to this chapter;

8 (c) The person has the right to remain silent and that any  
9 statement he or she makes may be used against him or her;

10 (d) The person has the right to present evidence and to cross-  
11 examine witnesses who testify against him or her at the probable cause  
12 hearing; and

13 (e) The person has the right to refuse psychiatric medications,  
14 including antipsychotic medication beginning twenty-four hours prior to  
15 the probable cause hearing.

16 (6) When proceedings are initiated under (~~RCW 71.05.150 (2), (3),~~  
17 ~~or (4)(b))~~ section 8 of this act, no later than twelve hours after  
18 such person is admitted to the evaluation and treatment facility the  
19 personnel of the evaluation and treatment facility or the designated  
20 mental health professional shall serve on such person a copy of the  
21 petition for initial detention and the name, business address, and  
22 phone number of the designated attorney and shall forthwith commence  
23 service of a copy of the petition for initial detention on the  
24 designated attorney.

25 (7) The judicial hearing described in subsection (5) of this  
26 section is hereby authorized, and shall be held according to the  
27 provisions of subsection (5) of this section and rules promulgated by  
28 the supreme court.

29 (8) At the probable cause hearing the detained person shall have  
30 the following rights in addition to the rights previously specified:

31 (a) To present evidence on his or her behalf;

32 (b) To cross-examine witnesses who testify against him or her;

33 (c) To be proceeded against by the rules of evidence;

34 (d) To remain silent;

35 (e) To view and copy all petitions and reports in the court file.

36 (9) The physician-patient privilege or the psychologist-client  
37 privilege shall be deemed waived in proceedings under this chapter  
38 relating to the administration of antipsychotic medications. As to

1 other proceedings under this chapter, the privileges shall be waived  
2 when a court of competent jurisdiction in its discretion determines  
3 that such waiver is necessary to protect either the detained person or  
4 the public.

5 The waiver of a privilege under this section is limited to records  
6 or testimony relevant to evaluation of the detained person for purposes  
7 of a proceeding under this chapter. Upon motion by the detained person  
8 or on its own motion, the court shall examine a record or testimony  
9 sought by a petitioner to determine whether it is within the scope of  
10 the waiver.

11 The record maker shall not be required to testify in order to  
12 introduce medical or psychological records of the detained person so  
13 long as the requirements of RCW 5.45.020 are met except that portions  
14 of the record which contain opinions as to the detained person's mental  
15 state must be deleted from such records unless the person making such  
16 conclusions is available for cross-examination.

17 (10) Insofar as danger to the person or others is not created, each  
18 person involuntarily detained, treated in a less restrictive  
19 alternative course of treatment, or committed for treatment and  
20 evaluation pursuant to this chapter shall have, in addition to other  
21 rights not specifically withheld by law, the following rights:

22 (a) To wear his or her own clothes and to keep and use his or her  
23 own personal possessions, except when deprivation of same is essential  
24 to protect the safety of the resident or other persons;

25 (b) To keep and be allowed to spend a reasonable sum of his or her  
26 own money for canteen expenses and small purchases;

27 (c) To have access to individual storage space for his or her  
28 private use;

29 (d) To have visitors at reasonable times;

30 (e) To have reasonable access to a telephone, both to make and  
31 receive confidential calls, consistent with an effective treatment  
32 program;

33 (f) To have ready access to letter writing materials, including  
34 stamps, and to send and receive uncensored correspondence through the  
35 mails;

36 (g) To discuss treatment plans and decisions with professional  
37 persons;

1 (h) Not to consent to the administration of antipsychotic  
2 medications and not to thereafter be administered antipsychotic  
3 medications unless ordered by a court under RCW 71.05.217 or pursuant  
4 to an administrative hearing under RCW 71.05.215;

5 (i) Not to consent to the performance of electroconvulsant therapy  
6 or surgery, except emergency life-saving surgery, unless ordered by a  
7 court under RCW 71.05.217;

8 (j) Not to have psychosurgery performed on him or her under any  
9 circumstances;

10 (k) To dispose of property and sign contracts unless such person  
11 has been adjudicated an incompetent in a court proceeding directed to  
12 that particular issue.

13 (11) Every person involuntarily detained shall immediately be  
14 informed of his or her right to a hearing to review the legality of his  
15 or her detention and of his or her right to counsel, by the  
16 professional person in charge of the facility providing evaluation and  
17 treatment, or his or her designee, and, when appropriate, by the court.  
18 If the person so elects, the court shall immediately appoint an  
19 attorney to assist him or her.

20 (12) A person challenging his or her detention or his or her  
21 attorney((~~τ~~)) shall have the right to designate and have the court  
22 appoint a reasonably available independent physician or licensed mental  
23 health professional to examine the person detained, the results of  
24 which examination may be used in the proceeding. The person shall, if  
25 he or she is financially able, bear the cost of such expert  
26 ((~~information—[examination]~~)) examination, otherwise such expert  
27 examination shall be at public expense.

28 (13) Nothing contained in this chapter shall prohibit the patient  
29 from petitioning by writ of habeas corpus for release.

30 (14) Nothing in this chapter shall prohibit a person committed on  
31 or prior to January 1, 1974, from exercising a right available to him  
32 or her at or prior to January 1, 1974, for obtaining release from  
33 confinement.

34 (15) Nothing in this section permits any person to knowingly  
35 violate a no-contact order or a condition of an active judgment and  
36 sentence or an active condition of supervision by the department of  
37 corrections.

1       **Sec. 16.** RCW 71.05.390 and 2005 c 504 s 109, 2005 c 453 s 5, and  
2 2005 c 274 s 346 are each reenacted and amended to read as follows:

3       Except as provided in this section, RCW 71.05.445, 71.05.630,  
4 70.96A.150, or pursuant to a valid release under RCW 70.02.030, the  
5 fact of admission and all information and records compiled, obtained,  
6 or maintained in the course of providing services to either voluntary  
7 or involuntary recipients of services at public or private agencies  
8 shall be confidential.

9       Information and records may be disclosed only:

10       (1) In communications between qualified professional persons to  
11 meet the requirements of this chapter, in the provision of services or  
12 appropriate referrals, or in the course of guardianship proceedings.  
13 The consent of the person, or his or her personal representative or  
14 guardian, shall be obtained before information or records may be  
15 disclosed by a professional person employed by a facility unless  
16 provided to a professional person:

17       (a) Employed by the facility;

18       (b) Who has medical responsibility for the patient's care;

19       (c) Who is a designated mental health professional;

20       (d) Who is providing services under chapter 71.24 RCW;

21       (e) Who is employed by a state or local correctional facility where  
22 the person is confined or supervised; or

23       (f) Who is providing evaluation, treatment, or follow-up services  
24 under chapter 10.77 RCW.

25       (2) When the communications regard the special needs of a patient  
26 and the necessary circumstances giving rise to such needs and the  
27 disclosure is made by a facility providing services to the operator of  
28 a facility in which the patient resides or will reside.

29       (3)(a) When the person receiving services, or his or her guardian,  
30 designates persons to whom information or records may be released, or  
31 if the person is a minor, when his or her parents make such  
32 designation.

33       (b) A public or private agency shall release to a person's next of  
34 kin, attorney, personal representative, guardian, or conservator, if  
35 any:

36       (i) The information that the person is presently a patient in the  
37 facility or that the person is seriously physically ill;

1 (ii) A statement evaluating the mental and physical condition of  
2 the patient, and a statement of the probable duration of the patient's  
3 confinement, if such information is requested by the next of kin,  
4 attorney, personal representative, guardian, or conservator; and

5 (iii) Such other information requested by the next of kin or  
6 attorney as may be necessary to decide whether or not proceedings  
7 should be instituted to appoint a guardian or conservator.

8 (4) To the extent necessary for a recipient to make a claim, or for  
9 a claim to be made on behalf of a recipient for aid, insurance, or  
10 medical assistance to which he or she may be entitled.

11 (5)(a) For either program evaluation or research, or both:  
12 PROVIDED, That the secretary adopts rules for the conduct of the  
13 evaluation or research, or both. Such rules shall include, but need  
14 not be limited to, the requirement that all evaluators and researchers  
15 must sign an oath of confidentiality substantially as follows:

16 "As a condition of conducting evaluation or research concerning  
17 persons who have received services from (fill in the facility, agency,  
18 or person) I, . . . . ., agree not to divulge, publish, or  
19 otherwise make known to unauthorized persons or the public any  
20 information obtained in the course of such evaluation or research  
21 regarding persons who have received services such that the person who  
22 received such services is identifiable.

23 I recognize that unauthorized release of confidential information  
24 may subject me to civil liability under the provisions of state law.

25 /s/ .....

26 (b) Nothing in this chapter shall be construed to prohibit the  
27 compilation and publication of statistical data for use by government  
28 or researchers under standards, including standards to assure  
29 maintenance of confidentiality, set forth by the secretary.

30 (6)(a) To the courts as necessary to the administration of this  
31 chapter or to a court ordering an evaluation or treatment under chapter  
32 10.77 RCW solely for the purpose of preventing the entry of any  
33 evaluation or treatment order that is inconsistent with any order  
34 entered under this chapter.

1 (b) To a court or its designee in which a motion under chapter  
2 10.77 RCW has been made for involuntary medication of a defendant for  
3 the purpose of competency restoration.

4 (c) Disclosure under this subsection is mandatory for the purpose  
5 of the health insurance portability and accountability act.

6 (7)(a) When a mental health professional is requested by a  
7 representative of a law enforcement or corrections agency, including a  
8 police officer, sheriff, community corrections officer, a municipal  
9 attorney, or prosecuting attorney to undertake an investigation or  
10 provide treatment under RCW 71.05.150 or section 2 or 8 of this act,  
11 the mental health professional shall, if requested to do so, advise the  
12 representative in writing of the results of the investigation including  
13 a statement of reasons for the decision to detain or release the person  
14 investigated. Such written report shall be submitted within seventy-  
15 two hours of the completion of the investigation or the request from  
16 the law enforcement or corrections representative, whichever occurs  
17 later.

18 (b) To law enforcement officers, public health officers, or  
19 personnel of the department of corrections or the indeterminate  
20 sentence review board for persons who are the subject of the records  
21 and who are committed to the custody or supervision of the department  
22 of corrections or indeterminate sentence review board which information  
23 or records are necessary to carry out the responsibilities of their  
24 office. Except for dissemination of information released pursuant to  
25 RCW 71.05.425 and 4.24.550, regarding persons committed under this  
26 chapter under RCW 71.05.280(3) and 71.05.320(~~(+2)~~) (3)(c) after  
27 dismissal of a sex offense as defined in RCW 9.94A.030, the extent of  
28 information that may be released is limited as follows:

29 (i) Only the fact, place, and date of involuntary commitment, the  
30 fact and date of discharge or release, and the last known address shall  
31 be disclosed upon request;

32 (ii) The law enforcement and public health officers or personnel of  
33 the department of corrections or indeterminate sentence review board  
34 shall be obligated to keep such information confidential in accordance  
35 with this chapter;

36 (iii) Additional information shall be disclosed only after giving  
37 notice to said person and his or her counsel and upon a showing of  
38 clear, cogent, and convincing evidence that such information is

1 necessary and that appropriate safeguards for strict confidentiality  
2 are and will be maintained. However, in the event the said person has  
3 escaped from custody, said notice prior to disclosure is not necessary  
4 and that the facility from which the person escaped shall include an  
5 evaluation as to whether the person is of danger to persons or property  
6 and has a propensity toward violence;

7 (iv) Information and records shall be disclosed to the department  
8 of corrections pursuant to and in compliance with the provisions of RCW  
9 71.05.445 for the purposes of completing presentence investigations or  
10 risk assessment reports, supervision of an incarcerated offender or  
11 offender under supervision in the community, planning for and provision  
12 of supervision of an offender, or assessment of an offender's risk to  
13 the community; and

14 (v) Disclosure under this subsection is mandatory for the purposes  
15 of the health insurance portability and accountability act.

16 (8) To the attorney of the detained person.

17 (9) To the prosecuting attorney as necessary to carry out the  
18 responsibilities of the office under RCW 71.05.330(2) and  
19 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access  
20 to records regarding the committed person's treatment and prognosis,  
21 medication, behavior problems, and other records relevant to the issue  
22 of whether treatment less restrictive than inpatient treatment is in  
23 the best interest of the committed person or others. Information shall  
24 be disclosed only after giving notice to the committed person and the  
25 person's counsel.

26 (10) To appropriate law enforcement agencies and to a person, when  
27 the identity of the person is known to the public or private agency,  
28 whose health and safety has been threatened, or who is known to have  
29 been repeatedly harassed, by the patient. The person may designate a  
30 representative to receive the disclosure. The disclosure shall be made  
31 by the professional person in charge of the public or private agency or  
32 his or her designee and shall include the dates of commitment,  
33 admission, discharge, or release, authorized or unauthorized absence  
34 from the agency's facility, and only such other information that is  
35 pertinent to the threat or harassment. The decision to disclose or not  
36 shall not result in civil liability for the agency or its employees so  
37 long as the decision was reached in good faith and without gross  
38 negligence.

1 (11) To appropriate corrections and law enforcement agencies all  
2 necessary and relevant information in the event of a crisis or emergent  
3 situation that poses a significant and imminent risk to the public.  
4 The decision to disclose or not shall not result in civil liability for  
5 the mental health service provider or its employees so long as the  
6 decision was reached in good faith and without gross negligence.

7 (12) To the persons designated in RCW 71.05.425 for the purposes  
8 described in that section.

9 (13) Civil liability and immunity for the release of information  
10 about a particular person who is committed to the department under RCW  
11 71.05.280(3) and 71.05.320(~~(+2)~~) (3)(c) after dismissal of a sex  
12 offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

13 (14) Upon the death of a person, his or her next of kin, personal  
14 representative, guardian, or conservator, if any, shall be notified.

15 Next of kin who are of legal age and competent shall be notified  
16 under this section in the following order: Spouse, parents, children,  
17 brothers and sisters, and other relatives according to the degree of  
18 relation. Access to all records and information compiled, obtained, or  
19 maintained in the course of providing services to a deceased patient  
20 shall be governed by RCW 70.02.140.

21 (15) To the department of health for the purposes of determining  
22 compliance with state or federal licensure, certification, or  
23 registration rules or laws. However, the information and records  
24 obtained under this subsection are exempt from public inspection and  
25 copying pursuant to chapter 42.56 RCW.

26 (16) To mark headstones or otherwise memorialize patients interred  
27 at state hospital cemeteries. The department of social and health  
28 services shall make available the name, date of birth, and date of  
29 death of patients buried in state hospital cemeteries fifty years after  
30 the death of a patient.

31 (17) To law enforcement officers and to prosecuting attorneys as  
32 are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of  
33 information that may be released is limited as follows:

34 (a) Only the fact, place, and date of involuntary commitment, an  
35 official copy of any order or orders of commitment, and an official  
36 copy of any written or oral notice of ineligibility to possess a  
37 firearm that was provided to the person pursuant to RCW 9.41.047(1),  
38 shall be disclosed upon request;

1 (b) The law enforcement and prosecuting attorneys may only release  
2 the information obtained to the person's attorney as required by court  
3 rule and to a jury or judge, if a jury is waived, that presides over  
4 any trial at which the person is charged with violating RCW  
5 9.41.040(2)(a)(ii);

6 (c) Disclosure under this subsection is mandatory for the purposes  
7 of the health insurance portability and accountability act.

8 (18) When a patient would otherwise be subject to the provisions of  
9 RCW 71.05.390 and disclosure is necessary for the protection of the  
10 patient or others due to his or her unauthorized disappearance from the  
11 facility, and his or her whereabouts is unknown, notice of such  
12 disappearance, along with relevant information, may be made to  
13 relatives, the department of corrections when the person is under the  
14 supervision of the department, and governmental law enforcement  
15 agencies designated by the physician in charge of the patient or the  
16 professional person in charge of the facility, or his or her  
17 professional designee.

18 Except as otherwise provided in this chapter, the uniform health  
19 care information act, chapter 70.02 RCW, applies to all records and  
20 information compiled, obtained, or maintained in the course of  
21 providing services.

22 (19) The fact of admission, as well as all records, files,  
23 evidence, findings, or orders made, prepared, collected, or maintained  
24 pursuant to this chapter shall not be admissible as evidence in any  
25 legal proceeding outside this chapter without the written consent of  
26 the person who was the subject of the proceeding except in a subsequent  
27 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)  
28 or 71.05.320(~~(+2)~~) (3)(c) on charges that were dismissed pursuant to  
29 chapter 10.77 RCW due to incompetency to stand trial, in a civil  
30 commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of  
31 a minor, a guardianship or dependency proceeding. The records and  
32 files maintained in any court proceeding pursuant to this chapter shall  
33 be confidential and available subsequent to such proceedings only to  
34 the person who was the subject of the proceeding or his or her  
35 attorney. In addition, the court may order the subsequent release or  
36 use of such records or files only upon good cause shown if the court  
37 finds that appropriate safeguards for strict confidentiality are and  
38 will be maintained.

1        NEW SECTION.    **Sec. 17.** Nothing in this act shall be construed to  
2 alter or diminish a prosecutor's inherent authority to divert or pursue  
3 the prosecution of criminal offenders.

4        NEW SECTION.    **Sec. 18.** RCW 10.77.090 (Stay of proceedings--  
5 Commitment--Findings--Evaluation, treatment--Extensions of commitment--  
6 Alternative procedures--Procedure in nonfelony charge) and 2000 c 74 s  
7 3, 1998 c 297 s 38, 1989 c 420 s 5, 1979 ex.s. c 215 s 3, 1974 ex.s. c  
8 198 s 8, & 1973 1st ex.s. c 117 s 9 are each repealed.

9        NEW SECTION.    **Sec. 19.** If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

13        NEW SECTION.    **Sec. 20.** Captions used in this act are not any part  
14 of the law.

--- END ---